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**TESTIMONY IN SUPPORT OF GENERAL ASSEMBLY BILL No. 6477 - AN ACT
CONCERNING THE STATUTORY LIEN FOR ASSESSMENTS ON A
CONDOMINIUM UNIT**

MARCH 4, 2013

Good evening Senator Crisco, Representative Megna, Senator Hartley, Representative Wright and members of the Insurance and Real Estate Committee. Thank you for the opportunity to provide testimony on behalf of Imagineers, LLC ("Imagineers").

I am Karl Kuegler, Jr. of Imagineers, LLC where I serve as the Director of Property Management for our common interest community management division. From our offices located in Hartford and Seymour, we serve about 178 Connecticut common interest communities comprising about 17,000 homes. Imagineers is registered with the Department of Consumer Protection as a Community Association Manager holding registration number 0001 and has been serving Connecticut common interest communities for 32 years. I have over 23 years experience in common interest community management and hold a Certified Manager of Community Associations designation from the National Board of Certification for Community Association Managers. Imagineers is a member of the Connecticut Chapter of Community Associations Institute. I serve on the organization's Legislative Action Committee and chair the organization's annual state educational conference.

Imagineers is in favor of the bill, but would like additional language added to address other deficiencies in the current statute. I would also like to mention that the Judiciary Committee is entertaining a bill this session regarding the statutory lien for assessments on condominium units. Listed below is summary of thoughts and additional concerns with the current statute:

INCREASE IN THE PRIORITY LIEN FROM 6 TO 12 MONTHS:

Section 1 (b) of 6477 provides for the increase in the priority lien amount from its current amount of 6 to 12 months immediately preceding institution of an action to enforce the association's lien or a security interest. We certainly support the increase from 6 to 12 months. We understand the increase would not pose an issue or restrict mortgage options for owners financing properties in common interest communities. Connecticut is in compliance with current Fannie Mae Selling Guidelines. Section B4-2.1-06 of the guidelines dated August 21, 2012 indicates:

Fannie Mae allows the greater of six months of regular common expense assessments, or the maximum amount permitted under applicable state law, to have limited priority over Fannie Mae's mortgage lien if the condo or PUD project is located in a jurisdiction that has enacted

- the Uniform Condo Act;*
- the Uniform Common Interest Ownership Act; or*
- other similar statutes that provide for regular common expense assessments, as reflected by the project's operating budget, to have such priority over first mortgage liens.*

Connecticut common interest communities routinely are unable to collect fees as a result of extended foreclosure efforts. Rarely if ever do foreclosure efforts resolve within the 6 months. Ultimately the other homeowners of the community that are fulfilling their obligations in paying fees to the association need to make up the difference through increased fees or loss services. Common interest communities budget income only great enough to offset expenses. Associations

are not to make a profit. When the income budgeted is not received, the association has no option but to increase fees or cut services to their association. An increase in the statutory lien would help reduce the negative impact of foreclosures on associations and their members.

CURRENT DEFICIENCIES IN THE STATUTE NOT ADDRESSED

A separate issue pertaining to this statute has become a major and potentially devastating issue for common interest communities in our state. Some banks are employing a legal strategy during foreclosure action that negatively impacts community associations and will have a significant negative impact on community associations if it were to continue.

Historically, when banks/mortgage companies brought action to foreclose on a unit, Connecticut state law ensured that a portion of the association's lien is not foreclosed out by the mortgage foreclosure. This has been an important protection for associations because it ensured that if a bank obtained foreclosure judgment, the bank would become the new owner of the unit and still be subject to the priority portion of the association's lien. This protection provided under a "priority lien" guaranteed that the bank, as the new owner, would be required to pay a minimum of six months worth of common fees plus reasonable court costs and attorney fees (as determined by the court) and then pay the monthly common charges to the association from the date it took title to the unit going forward.

In at least two cases, the Connecticut courts have agreed with the bank's position to eliminate its additional financial responsibility to the association. Apparently, the legal strategy for the bank has been to pay the six-month priority lien without taking title to the unit and then seek the court's interpretation that it applies only once during the lawsuit or even the lifetime of the mortgage. The bank then just sits back and lets the foreclosure sit uncompleted, often for many years. In the meantime, the association is obligated to provide services to the unit as it does to all other units. In addition to the landscaping, snow removal and other maintenance services, some associations are also obligated to provide heat, water and other services to the unit if provided to other units as part of its responsibility. It is suspected that the delays could be a result of the sheer size of the banks, the disorganization that is resulted as the banks attempted to adjust to the many mergers and acquisitions that took place at the height of the mortgage meltdown, improper practices of the people who made the loans and the way in which the loans were administered, and quite possibly, that some of the banks have simply determined that there is no point in taking title to condominium units and paying their share of the cost of maintaining the condominiums, unless the bank can dispose of the condominium unit almost immediately.

Even if the defaulting unit owner eventually works out a deal with the bank to reinstate the mortgage, some of these banks have asserted that the mortgage continues to trump priority lien going forward if the owner becomes delinquent again with the payment of fees to the association. The association could start its own foreclosure, but under the bank's theory, it would have to take title to the unit and also repay the mortgage on it, which would often cost more than the unit is worth.

If the Connecticut General Assembly does not make it clear that the priority lien is meant to protect associations and their unit owners, Connecticut associations will be severely

impacted. Every time a unit owner abandons a unit, or just stops paying their mortgage and common charges, Connecticut associations and their homeowners will be obligated to carry the defaulting unit and will in effect be subsidizing the bank's asset. In this instance everyone else in the community needs to make up the difference for the lost income resulting from the bank's delay in finalizing the foreclosure effort while subsidizing the bank by maintaining the bank's asset with no obligation of the bank to pay for the expense. The extra funds necessary to keep the association financially solvent come directly from the other homeowners. There are no other sources of income to save the day for our common interest communities. With increasing expenses due to aging infrastructure and economically driven factors, associations are already facing financial challenges and hardships not experienced previously. The added burden of subsidizing big banks as they take advantage of associations may be too great for some associations to survive.